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CODY L LAMBERT
2854 DAYSHA DR
ROSEBURG OR 97470

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JAN 11 2006

OFFICE OF PETITIONS

In re Application of :
Cody L. Lambert :
Application No. 09/922,529 : **ON PETITION**
Filed: December 11, 2001 :
Title: Telescopic Universal Bed Rack :

This is a decision on the paper filed August 11, 2005 (dated August 8, 2005), which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181.

The petition under 37 CFR 1.181 is **DISMISSED**.

The above-identified application became abandoned for failure to timely file a response to the Office action mailed August 20, 2003, which set a shortened statutory period for reply of one (1) month. No reply having been received, the application became abandoned on September 21, 2003. A Notice of Abandonment was mailed on April 6, 2004. On April 26, 2004 (dated April 18, 2004), Applicant filed a petition to withdraw the holding of abandonment, asserting that he timely filed a response via Express Mail mailing label number ER150654105US on September 18, 2003. However, in a decision mailed on May 12, 2004, the petition was dismissed because applicant did not include a copy of the correspondence alleged to have been filed on September 18, 2003, bearing a copy of Express Mail mailing label number ER150654105US. Applicant filed a renewed petition on June 3, 2004 (dated May 28, 2004), including the papers purported to have been filed on September 18, 2003. However, the papers did not include a copy of the Express Mail mailing label number affixed thereon. Accordingly, the renewed petition was dismissed in a decision mailed on June 28, 2004.

With the instant renewed petition, petitioner has filed a copy of the papers asserted to have been filed on September 18, 2003. This time the papers include a copy of Express Mail mailing label number ER150654105US in the top margin. However, it is noted that these papers submitted with the petition on August 11, 2005, do not appear to be a "true copy" of the papers originally filed, as they differ from the papers filed on June 3, 2004.

37 CFR 1.10(e) states that any person mailing correspondence addressed to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";
- (3) The petition includes a copy of the **originally deposited** paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in", a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and
- (4) The petition included a statement, which establishes to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any other official notation by the USPS are **true copies** of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS. (Emphasis added).

It is further noted that the petition filed on August 11, 2005 (dated August 8, 2005) also bears a copy of Express Mail mailing label number ER150654105US - the same number affixed to the correspondence allegedly filed on September 18, 2003.

Petitioner is recommended to promptly file a petition to revive under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m) - currently \$750 for a small entity; (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional

A grantable petition under 37 CFR 1.137(a) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 CFR 1.17(1) - currently \$250 for a small entity; (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m) - currently \$750 for a small entity; (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) Any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to paragraph (d) of this section.

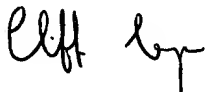
The change of correspondence address filed May 22, 2005 has been entered.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

By FAX: (703) 872-9306
 Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-3207.



Cliff Congo
Petitions Attorney
Office of Petitions

Enc: PTO/SB/64 (2 pages)